

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE
ELECTRONICALLY FILED

Allison Johnson and
Melissa Tantibanchachai, individually and on
behalf of all others similarly situated;

Case No. 3:09CV-669-H

Plaintiff,

v.

**FIRST AMENDED COMPLAINT -
CLASS ACTION**

SIGG Switzerland (USA), Inc.,

Defendant.

Serve: Karen W. Myers
Cummings & Lockwood , LLC,
6 Landmark Square, Stamford, CT 06901

Representative Plaintiffs Allison Johnson and Melissa Tantibanchachai, on behalf of themselves and all others similarly situated, allege as follows:

INTRODUCTION

1. Representative Plaintiffs seek to represent a nationwide class of consumers who purchased SIGG reusable aluminum bottles that unbeknownst to them contain bisphenol A (“BPA”), an industrial chemical that mimics estrogen and has raised health concerns in the United States and other countries. Plaintiffs and the class they seek to represent paid more for SIGG bottles than other available alternatives because they believed SIGG’s representations that their bottles were BPA-free. SIGG continued to make these representations about its bottles—and even marketed and sold children’s versions of these bottles to concerned parents—until August 2009 when SIGG finally

revealed that its bottles contained BPA and that SIGG had been trying to develop new bottles without BPA since 2006.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332(d) because the parties are citizens of different States and the matter in controversy exceeds the jurisdictional amount exclusive of interest and costs.

3. Venue is proper under 28 U.S.C. § 1391(a) because Defendant does business in this district, Representative Plaintiff Johnson resides in this district, and she purchased SIGG bottles in this district.

PARTIES

4. Representative Plaintiff Allison Johnson is a citizen of the Commonwealth of Kentucky, and resides in Louisville.

5. Representative Plaintiff, Melissa Tantibanchachai is a citizen of the State of Texas, and resides in Sugarland.

6. Defendant, SIGG Switzerland (USA), Inc., is a corporation with its principal place of business in Stamford, Connecticut and may be served with process through its registered agent, Karen W. Myers, Cummings & Lockwood, LLC, 6 Landmark Square, Stamford, CT 06901.

SUMMARY OF FACTS

7. SIGG Switzerland (USA) is a wholly owned subsidiary of SIGG Switzerland, an aluminum product manufacturer. SIGG Switzerland aluminum bottles for both adults and children have become increasingly popular with consumers over the last several years, and in 2005, SIGG created its US subsidiary. At the time, SIGG Switzerland (USA) (“SIGG”) US President, Steve

Wasik, stated that “Americans are now discovering that using a high quality, reusable bottle like SIGG makes great sense—both financially and environmentally.” (mysigg.com website.)

8. The increasing popularity of SIGG aluminum bottles developed as a result of United States consumers’ efforts to find an alternative to bottles containing BPA. BPA is a manufactured chemical compound commonly used in the production of plastics and epoxy resins and found to affect the development of animals by acting like the hormone estrogen.

9. Media reports and government agencies in 2007 and 2008 expressed concern about the possibility that BPA could be hazardous to human health. In the fall of 2007, the National Toxicology Program (“NTP”) (an interagency federal government program) issued a brief on BPA based on a report of an expert panel on BPA (“NTP Brief”). The NTP Brief discussed the reproductive and developmental hazards associated with exposure to BPA. The NTP Brief was peer-reviewed in 2008. Among the NTP’s conclusions regarding BPA is that it had “some concern for effects on the brain, behavior, and prostate gland in fetuses, infants, and children at current human exposures to bisphenol A.” (niehs.nih.gov website.) One of the NTP’s recommendations to prevent exposure to BPA is to use baby bottles that are BPA free. Even today Congress is considering a bill to prohibit the manufacture, sale, or distribution of children’s food and beverage containers composed of BPA. (S.753 BPA-Free Kids Act of 2009.)

10. To profit from consumers’ concerns regarding BPA, SIGG directly and indirectly represented that its bottles, including the bottles it designed and sold for children, were BPA-free. The SIGG bottles cost significantly more than comparable plastic bottles but were seen as worth the added cost by consumers who wanted to avoid BPA products. SIGG was aware that consumers

believed its bottles were BPA-free and did nothing to change this generally held belief among consumers.

11. To the contrary, when consumer groups stated that SIGG's bottles might contain BPA, SIGG struck back. In early 2007, the Environmental Working Group ("EWG") published a guide to BPA-free products and stated its belief that SIGG water bottles contained BPA. In response, SIGG President Wasik demanded that EWG either furnish proof of its "allegations" or remove SIGG from its report. On March 12, 2007, President Wasik issued a press release which contained the following:

On March 9th, it was brought to my attention that a website sponsored by Environmental Working Group (EWG) made mention that SIGG bottles contain plastic liners with bisphenol A (BPA).

I can assure you that SIGG bottles are **absolutely not made with a plastic liner and are in fact lined with a proprietary, non-toxic, water-based resin** which has been refined over decades of study and is extremely safe & stable.

Based on the confidence we have in our product backed by numerous laboratory studies, we questioned the EWG and requested that they provide us with the testing they have conducted on SIGG—or alternatively remove the "SIGG" mention from their website if they have not tested SIGG. Within 24 hours of this request, the EWG removed SIGG's name from their report.

(emphasis added.)

12. Not content to publicize this press release regarding the EWG retraction on its own web site, SIGG retained a marketing firm to post this information on other web sites. For example, on March 13, 2007, in an internet discussion group regarding the topic "Finally a Safe Sippy Cup" (in which parents posted comments about BPA and safe sippy cups for their children), SIGG marketer Merideth McNally joined in the discussion and posted information from this press release. Ms. McNally represented to the concerned parents that SIGG bottles are "NOT made with a plastic

liner and are in fact lined with a proprietary, non-toxic, water-based resin” (emphasis in the original) and “SIGG bottles have been thoroughly tested in Europe to ensure 0.0% leaching of any substance - no trace of BPA, BPB or any phthalates.”

13. Also in March 2007, another consumer group, the Organic Consumers Association (“OCA”), reported in its newsletter that consumers should avoid SIGG bottles along with other products containing BPA. SIGG immediately contacted the OCA, and claimed that it had changed its liner to be BPA-free. The OCA then issued a retraction and letter of apology, stating in its next newsletter that SIGG “has since gone BPA-free, so it is now safe to purchase SIGG water bottles.” Attempting to use the OCA retraction to create the impression that SIGG bottles were indeed BPA-free, Mr. Wasik proclaimed in a subsequent press release: “When we questioned the OCA on their mention of SIGG, this is the emailed response we received: ‘We made a mistake. Sigg bottles do not contain BPAs... it was read wrong and there was confusion. Apologies about this.’ - Member Services, OCA.” Despite the fact that he *admittedly* knew otherwise, Mr. Wasik strategically reiterated the OCA’s statement as the truth, failed to correct the OCA’s statement and inform consumers that SIGG bottles did indeed contain BPA, and instead assured consumers that “SIGG bottles are leach-free and 100% safe.”

14. While consumer groups expressed concern about the lining in SIGG’s bottles, SIGG changed the description of its lining in its product catalogs from “micro-epoxy” to a more vague description which eliminated the term “epoxy.” Because epoxy liners generally contain BPA, consumer groups pressed for more details, which SIGG—citing an agreement with a third party who

apparently produced the bottle liners—refused to give:

SIGG has proprietary rights with a 3rd party producer of our liner formula. In other words, we do not produce it ourselves. This supplier is based in Switzerland and has an impeccable reputation for quality and safety. SIGG is the only water bottle on the market to use this special liner. As there are many copy-cat manufacturers in the market (most based in China) that would like to get their hands on this formula, our supplier has an agreement with SIGG to keep his formula confidential.

Because we know that this liner is the very best on the market and we have had a positive working relationship with this supplier, we have honored that agreement.

15. Meanwhile, retailers selling SIGG bottles—which included REI, Whole Foods, and Patagonia—were similarly misled regarding the BPA in SIGG bottles. For example, Patagonia claims that it “**very clearly asked SIGG if there was BPA in [its] bottles and their liners, and they clearly said there was not.**” (emphasis added) (Patagonia 2009 Press Release—<http://multisport.com/2009/06/13/patagonia-dumps-sigg/>.) It is therefore not surprising that a retailer industry website confirmed that retailers were representing to consumers that SIGG bottles were BPA-free. (August 19, 2009 SNEWS article *Aluminum bottles you are selling may NOT be BPA-free.*) Mr. Wasik himself later stated in an interview that he was aware that some retailers were marketing SIGG bottles as BPA-free. When Patagonia learned the truth about SIGG bottles, it terminated all co-branding and co-marketing efforts with SIGG, and stopped selling SIGG bottles.

16. On April 16, 2008, in a press release, SIGG made even more aggressive statements claiming its bottles were BPA-free. SIGG titled its press release “SIGG Quality & Safety Guarantee” and stated in the strongest possible terms that:

Very thorough migration testing . . . has consistently shown SIGG bottles have **no** presence of lead, phthalates, Perfluorooctanoic Acid (PFOA), Bysphenol A (BPA), Bysphenol B (BPB) or any other chemicals which scientists have deemed as potentially harmful.

Significantly, SIGG's emphasis, in the form of a bold, underlined, and italicized "**no**" is in the original press release. SIGG also highlighted in its press release two bullets regarding the testing of SIGG's own bottles:

- New SIGG bottles—no detectable BPA
- Used SIGG bottles (2 years old)—no detectable BPA

As a result, in April 2008, SIGG proclaimed to the public in writing and supported by allegedly "very thorough migration testing" that its bottles were BPA-free.

17. In reality, SIGG's testing was not "very thorough," but instead was designed to test for the presence of BPA at a lower sensitivity level than other tests commercially available at the time. SIGG thus not only misled consumers regarding the presence of BPA in its bottles, but also regarding the testing that it conducted to detect BPA leaching.

18. In August 2009, SIGG changed its public position for the first time and finally disclosed to the public that its bottles contained BPA. At that time, Mr. Wasik, now the CEO of SIGG Switzerland, revealed that, starting in 2006, SIGG began a program to develop a new liner for its bottles. This was the first press release from a SIGG CEO admitting that SIGG bottles produced before August 2008 contained BPA and that as early as 2006, SIGG was working to replace its water-based epoxy bottle liner that contained BPA. Although SIGG began producing this new BPA-free "EcoCare" liner in August 2008, it strategically waited a full year to publicize the differences between its new and old bottle liners, thereby allowing any remaining stock of the BPA-laden bottles to be diminished prior to its announcement. CEO Wasik nonetheless attempted to justify SIGG's concealment of BPA in its bottles by "distinguishing" between what he described as "last year[s]"

concern among the public about “BPA leaching from bottles” and what he viewed as the current concern about the “mere presence of BPA.”

19. Mr. Wasik separately confirmed to the media in August 2009 that he knew in 2006 that SIGG’s bottles contained BPA:

Once I was able to talk to our supplier in June of 2006, I learned that the water-based epoxy being used in our bottles contained BPA, but I was also assured that our lining was the best in the world and contained very low levels of BPA. . . . I went to our board and CEO and told them we needed to make a change to a new coating.

(August 19, 2009 SNEWS article *Aluminum bottles you are selling may NOT be BPA-free.*) Mr. Wasik’s candor with his own board differed from his and SIGG’s absolute lack of candor with consumers who believed they were purchasing BPA-free bottles. Accordingly, Representative Plaintiffs make the following specific fraud allegations with as much specificity as possible absent access to the information necessarily available only to SIGG, and only available to Representative Plaintiffs through formal discovery:

a. **Who:** SIGG and its President Steven Wasik concealed the presence of BPA in SIGG bottles from Representative Plaintiffs, the Class, and everyone in the chain of distribution.

b. **What:** SIGG admittedly knew as early as 2006 that its bottles contained BPA, yet it misrepresented the BPA content of its bottles and concealed the facts from Representative Plaintiffs, resulting in Representative Plaintiffs and Class Members paying more for their SIGG bottles than other readily available reusable bottles. In particular, Mr. Wasik and SIGG repeatedly made efforts to mislead the public, including by: (a) demanding in March 2007 that the EWG remove SIGG from its BPA product report; (b) demanding in March 2007 that the OCA “correct” its newsletter and repeating the OCA’s mistaken retraction in SIGG’s own press releases even though Mr. Wasik knew

it to be false; (c) issuing Mr. Wasik's April 16, 2008, press release, which misrepresented both the existence of BPA in SIGG bottles, as well as the nature of SIGG's efforts to test for BPA; (d) posting misleading comments on internet web sites and discussions about the BPA content of its bottles; (e) not correcting reviews of SIGG bottles that described them as BPA-free; and (f) informing retailers that SIGG bottles are BPA free and deciding to let retailers repeatedly promote SIGG bottles as BPA-free, even though Mr. Wasik and SIGG knew this was not true. SIGG engaged in this conduct by: (a) publishing press releases and lab tests and posting them on its website; (b) sending letters to consumer organizations, including the OCA and EWG; (c) posting misleading information on other organizations' web sites; and (d) making misleading or incorrect statements to retailers, including Patagonia.

c. **When:** SIGG concealed the fact that its bottles contained BPA starting no later than 2006, continuing on an ongoing basis until August 2009. During this same time, SIGG also made numerous false representations to both consumers and retailers regarding the BPA contained in SIGG bottles, as more fully set forth above. Representative Plaintiff is aware of no time at which SIGG disclosed this material information to anyone outside of SIGG prior to August 2009.

d. **Where:** SIGG concealed the fact that its bottles contained BPA in every communication it had with Representative Plaintiffs, the Class, and everyone in the chain of distribution. Representative Plaintiffs are aware of no document, communication, or other place in which SIGG disclosed the presence of BPA to anyone outside of SIGG until August 2009. Prior to August 2009, such information appeared in no sales documents, no displays, no advertisements, no warranties, nor on SIGG's website. Instead, SIGG misled and concealed material facts from consumers, as more fully described above, by: (a) publishing misleading or incorrect press releases

and lab tests and posting them on its website; (b) sending letters to consumer organizations, including the OCA and EWG; (c) posting misleading information on other organizations' web sites; and (d) making misleading or incorrect statements to retailers, including Patagonia.

e. **How:** SIGG concealed the fact that its bottles contained BPA by not disclosing it to Representative Plaintiffs, the Class, or anyone in the chain of distribution until August 2009, even though SIGG knew about the presence of BPA in its bottles and knew that such information would be important to a reasonable consumer. To the contrary, SIGG actively misled consumers regarding the presence of BPA in its bottles as more fully set forth above.

f. **Why:** SIGG concealed the fact that its bottles contained BPA for the purpose of inducing Representative Plaintiffs and Class members to purchase SIGG bottles instead of other readily available reusable bottles. Had SIGG disclosed the truth about its bottles, Representative Plaintiffs (and reasonable consumers) would not have bought the bottles.

20. In early 2008, Plaintiff Johnson purchased two SIGG bottles, including one for her child. She paid more for these bottles than other readily available reusable bottles. Ms. Johnson made the decision to purchase SIGG bottles only after learning about public health concerns regarding BPA and conducting extensive research regarding BPA-free bottles. She read articles reviewing SIGG bottles and describing them as being BPA-free, and she reviewed retailer information describing these bottles as being BPA-free. Ms. Johnson and her child regularly used both bottles until August 2009 when she learned of CEO Wasik's letter admitting that these bottles contained BPAs.

21. Plaintiff Tantibanchachai purchased two SIGG water bottles, one for herself and one for her child, in May 2008. She paid more for these bottles than other readily available reusable

bottles. Ms. Tantibanchachai made this decision to purchase SIGG bottles only after learning about public health concerns regarding BPA and conducting extensive research regarding BPA-free bottles. She read articles reviewing SIGG bottles and describing them as being BPA-free, and she reviewed retailer information describing these bottles as being BPA-free. She and her child regularly used both bottles until August 2009 when she learned of CEO Wasik's letter admitting that these bottles contained BPAs.

CLASS ACTION ALLEGATIONS

22. Representative Plaintiffs bring this action on behalf of themselves and all others similarly situated, as members of a proposed nationwide plaintiff class (the "Class") initially defined as:

All persons in the United States who purchased SIGG bottles that contained BPA. Excluded from this Class is any person, firm, trust, corporation, or other entity related to or affiliated with SIGG and any person, firm trust corporation, or other entity who purchased for resale SIGG bottles.

23. This action is brought and may properly be maintained as a class action pursuant to Federal Rules of Civil Procedure 23(a)(1)-(4), 23(b)(2), and 23(b)(3). This action satisfies these provisions' numerosity, commonality, typicality, adequacy, predominance, and superiority requirements.

24. The Class is so numerous that the individual joinder of all members is impracticable. While the Class's exact number and the identity of class members are currently unknown and can only be ascertained through appropriate discovery, Representative Plaintiffs are informed and believe that the Class includes thousands of individuals.

25. Common legal and factual questions exist that predominate over any questions affecting only individual Class members. These common questions, which do not vary from Class member to Class member, and which may be determined without reference to any Class member's individual circumstances, include, but are not limited to whether:

- a. SIGG concealed the presence of BPA in its bottles;
- b. SIGG breached its contract with consumers by selling them bottles containing BPA;
- c. SIGG breached its express warranties relating to the fitness and quality of the bottles; SIGG is subject to an implied warranty relating to the fitness and quality of its bottles;
- d. SIGG breached express or implied warranties as a result of selling the bottles with BPA as described herein;
- e. the Class is entitled to compensatory damages, and if so, the amount of such damages; and

As to Kentucky residents only:

- f. SIGG engaged in unfair, false, misleading, or deceptive acts or practices regarding its marketing and sale of the bottles;
- g. SIGG's conduct regarding the marketing and sale of its bottles violates the Kentucky Consumer Protection Act ("CPA"). KRS 367.110 *et seq.*
- h. the Class is entitled to injunctive and other equitable relief, including restitution and disgorgement, and if so, the nature of such relief;
- i. whether SIGG is liable for punitive damages, and if so, the amount of such damages.

26. Representative Plaintiffs' claims are typical of the Class members' claims. Defendant's common course of conduct caused Representative Plaintiffs and all Class members the same damages. In particular, Defendant's conduct caused each Class member's economic losses. Likewise, Representative Plaintiffs and other Class members must prove the same facts in order to establish the same claims.

27. Representative Plaintiffs are adequate Class representatives because they are Class members and their interests do not conflict with Class interests. Representative Plaintiffs retained counsel competent and experienced in products liability and mass torts class actions, and together Representative Plaintiffs and counsel intend to prosecute this action vigorously for the Class's benefit. Representative Plaintiffs and their counsel will fairly and adequately protect Class interests.

28. A class action is superior to other available methods for the fair and efficient adjudication of this litigation because individual litigation of each Class member's claim is impracticable. Even if each Class member could afford individual litigation, the court system could not. It would be unduly burdensome if thousands of individual cases proceed. Likewise, individual litigation presents a potential for inconsistent or contradictory judgments, the prospect of a race to the courthouse, as well as the risk of an inequitable allocation of recovery among those with equally meritorious claims. Individual litigation further increases the expense and delay to all parties and the courts because it requires individual resolution of common legal and factual questions. By contrast, the class action device presents far fewer management difficulties and provides the benefit of a single adjudication, economies of scale, and comprehensive supervision by a single court.

29. The various claims asserted in this action are additionally or alternatively certifiable under the provisions of Federal Rules of Civil Procedure 23(b)(1) and/or 23(b)(2) because:

- a. Separate actions would create a risk of inconsistent or varying adjudications with respect to individual Class members, thus establishing incompatible standards of conduct for Defendant.
- b. Separate actions would create the risk of adjudications that would, as a practical matter, be dispositive of other non-party Class members' interests, thereby substantially impairing or impeding non-party Class members' ability to protect their interests.
- c. Defendant has acted or refused to act on grounds generally applicable to the entire Class, thereby making appropriate final declaratory and injunctive relief with respect to the Class as a whole.

CLAIMS FOR RELIEF

30. SIGG represented, marketed and sold its bottles as being BPA-free. SIGG also concealed from consumers that its bottles contained BPA. SIGG owed a legal duty to Representative Plaintiffs and Plaintiff Class Members not to represent, market, and sell to them bottles described as BPA-free when the bottles actually contained BPA. SIGG breached its duty and proximately caused Representative Plaintiffs' and Plaintiff Class Members' damages.

FIRST CLAIM FOR RELIEF **(Breach of Contract)**

31. Representative Plaintiffs, individually and on behalf of the Class, re-allege the allegations contained in the foregoing paragraphs as if set forth verbatim.

32. SIGG entered into a contract with the Representative Plaintiffs and the Class to sell them BPA-free bottles. Though SIGG received payment from the Representative Plaintiffs and the Class, SIGG breached the contract by supplying these individuals with bottles that contained BPA.

33. As a direct and proximate result of Defendant's breach of its contract, Representative Plaintiffs and the Class have sustained economic losses, and are therefore entitled to compensatory damages and attorney fees and costs according to proof.

SECOND CLAIM FOR RELIEF
(Breach of Express Warranty)

34. Representative Plaintiffs, individually and on behalf of the Class, re-allege the allegations contained in the foregoing paragraphs as if set forth verbatim.

35. SIGG (and/or its authorized agents or sales representatives) expressly warranted that its bottles, which it designed, manufactured, assembled, promoted and sold to Representative Plaintiffs and the Class, did not contain BPA. SIGG further expressly warranted that its bottles were fit for the particular purpose for which they were to be used. Representative Plaintiffs and the Class relied on SIGG's skill, judgment, representations, and express warranties. SIGG's warranties and representations were false because the bottles contained BPA.

36. SIGG's bottles were unmerchantable and unfit for the particular, express purpose for which they were sold, namely as BPA-free bottles. Therefore, SIGG breached its express warranties when it sold its bottles to Representative Plaintiffs and the Class, in that the bottles failed to function as represented and intended.

37. As a direct and proximate result of SIGG's breach of its express warranties, Representative Plaintiffs and the Class have sustained economic losses, and are therefore entitled to compensatory damages and equitable relief according to proof.

THIRD CLAIM FOR RELIEF
(Breach of Implied Warranty)

38. Representative Plaintiffs, individually and on behalf of the Class, re-allege the allegations contained in the foregoing paragraphs as if set forth verbatim.

39. SIGG (and/or its authorized agents or sales representatives) impliedly warranted that its bottles, which Defendant designed, manufactured, assembled, promoted and sold to Representative Plaintiffs and the Class, were merchantable, fit and safe for ordinary use and did not contain BPA. SIGG further impliedly warranted that its bottles were fit for the particular purpose for which the product was to be used.

40. SIGG's bottles were unmerchantable and unfit for the particular purpose for which they were sold, namely as BPA-free bottles. Therefore, SIGG breached the implied warranties of merchantability and fitness for a particular purpose when it sold its bottles to Representative Plaintiffs and the Class, in that the bottles failed to function as represented and intended.

41. As a direct and proximate result of SIGG's breach of the implied warranties of merchantability and fitness for a particular purpose, Representative Plaintiffs and the Class have sustained economic losses, and are therefore entitled to compensatory damages and equitable relief according to proof.

FOURTH CLAIM FOR RELIEF
(Applicable to Kentucky residents only —
Violation of the Kentucky Consumer Protection Act)

42. Representative Plaintiffs, individually and on behalf of the Class, re-allege the allegations contained in the foregoing paragraphs as if set forth verbatim.

43. Representative Plaintiffs and the Class are natural “persons” within the meaning of KRS 367.110.

44. Representative Plaintiffs and the Class bring this cause of action pursuant to the Kentucky Consumer Protection Act, in that Representative Plaintiffs and the Class purchased the bottles primarily for personal, family or household purposes and thereafter suffered damages. KRS 367.220.

45. SIGG engaged in unfair, false, misleading, or deceptive acts or practices regarding its marketing and sale of its bottles. KRS 367.170.

46. SIGG represented to consumers that its bottles were BPA-free and omitted information from materials provided to the public regarding the presence of BPA in its bottles.

47. SIGG’s representations and/or omissions regarding its bottles were likely to mislead consumers. Representative Plaintiffs and the Class reasonably interpreted SIGG’s statements and/or omissions to mean that the bottles were BPA-free.

48. As a direct and proximate result of SIGG’s conduct, Representative Plaintiffs and the Class have sustained economic losses, and are therefore entitled to actual damages, equitable relief, attorneys’ fees and costs according to proof. KRS 367.220.

49. As said violation was willful, wanton, and malicious, Representative Plaintiffs and the Class are entitled to punitive damages.

PRAYER FOR RELIEF

50. WHEREFORE, Representative Plaintiffs and the Class pray for judgment against SIGG as follows:

- a. For an Order certifying the Class and any appropriate subclasses thereof under the appropriate provisions of Federal Rule of Civil Procedure 23, and appointing Representative Plaintiffs and their counsel to represent the Class;
- b. For the equitable relief requested;
- c. For compensatory damages according to proof;
- d. For punitive damages against SIGG, consistent with the degree of SIGG's willful, wanton, and malicious conduct.
- e. For all applicable statutory damages under the consumer protection act of Kentucky;
- f. For a restitution and disgorgement of profits;
- g. For an award of attorneys' fees and costs;
- h. For prejudgment interest and the costs of suit; and
- i. For such other and further relief as this Court may deem just and proper.

JURY DEMAND

Representative Plaintiffs hereby demand a trial by jury.

Dated this 16th day of October, 2009.

Respectfully submitted,

/s/ Michael A. Caddell (w/permission)

Michael A. Caddell
Cynthia B. Chapman
George Y. Nino
Caddell & Chapman
1331 Lamar, Suite 1070
Houston TX 77010-3027
713.751.0400 Telephone
713.751.0906 Facsimile
gyn@caddellchapman.com

Scott T. Dickens
Fultz Maddox Hovious & Dickens PLC
2700 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202
502.588.2005 (Direct Dial)
502.905.4811 (Cell)
502.588.2020 (Fax)
sdickens@fmhd.com